IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 520 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANSIBHAI DHANBHAI RAVAL

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for the Petitioner.

MR KAMLESH KACHHAVAH for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 26.12.2003, by

which he is detained as a 'bootlegger', under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 (" PASA ", for short). Along with the detention order, the petitioner was also served with the grounds of detention.

In the grounds of detention, there is a reference about two pending criminal cases against the petitioner. Both these cases are registered under various Sections of the Bombay Prohibition Act. The petitioner was found to have been allegedly dealing in Indian Made Foreign Liquor, illegally. The authority, after satisfying itself about the alleged illegal activities of the petitioner, detained the petitioner as a 'bootlegger' under PASA. It is the aforesaid order, which is impugned in this petition.

The learned Advocate for the petitioner submitted that so far as the criminal case at serial No.2 is concerned, at the time of passing the detention order, he was already in judicial custody. He submitted that without there being any material, the detaining authority has observed that in connection with the case at serial No.2, the petitioner, after submitting bail application at any point of time, may continue his activity after getting the bail. He submitted that it is not stated as to on what basis the authority has reached the subjective satisfaction that the petitioner will continue his alleged illegal activities again after getting the bail. He submitted that, as such, in such type of cases of repeater offenders, the Magistrates are not granting bail so easily. He submitted that there are instances in which bail applications are rejected also. In this connection, he has relied upon the decision of the Apex Court in Amritlal & Others v. Union Government and others, AIR 2000 SC 3675, wherein it is held as under :-

" ... ...

4. In Agustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the

detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

xxx xxx xxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... ..."

So far as the aforesaid aspect is concerned, it is, no doubt, true that the authority has not stated as to on what basis the authority has reached subjective satisfaction that the petitioner will get bail on presenting the application for bail and he sill start the activities again. I also find substance in the argument that once the detenu has repeated the same type of offence, bail applications are normally rejected.

Considering the aforesaid aspect of the matter about not properly explaining as to on what basis the authority has reached the subjective satisfaction that the petitioner, on presenting the application, will be released on bail, and since the subjective satisfaction for reaching the said conclusion is not reflected on the record, the petition is required to be allowed.

It is, however, clarified that if the petitioner is in judicial custody and he is not released on bail, it is for the authority concerned to oppose such application on its own merits. Releasing the petitioner from detention will have no bearing so far as the bail application is concerned and it is for the concerned Magistrate to consider this aspect whether the petitioner is a habitual offender etc., at the time of deciding the said bail application. In this behalf, of course, this Court is not expressing any opinion, as bail application is required to be decided by the Magistrate on its own merits and in accordance with law. This petition is required to be allowed only on the aforesaid point, as indicated above.

Mr.Kogje, learned AGP, however, submitted that even if the petitioner is released on bail, the Government may move appropriate application for cancellation of bail in view of the fact that the detenu has repeated the same type of offence. On this point, this court is not required to express any opinion, as it is for the State Government to take appropriate action, if it thinks fit, in accordance with law.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

6th July, 2003 (P.B. Majmudar, J.)

***

(apj)